



STATE BOARD OF EQUALIZATION

December 9, 1953

M--- F--- Stores
--- --- Division Office
XXXX --- Street
--- ---, California

Account No. - - XXXXX
M--- of S--- A---
XXX-XX --- ---
--- ---, California

Gentlemen:

The legal staff has reviewed your petition for redetermination.

As we understand the facts, in April 1950 you conducted a furniture business through five separate stores, but on that date, or shortly thereafter, four new corporations were created and one branch was sold to each corporation. Your president and vice president who are also shareholders in your corporation were, at the time of transfer, the sole shareholders of the four new corporations. We understand that the consideration received by you from each corporation consisted of cash and notes receivable. Your corporation continued to operate the --- --- store inasmuch as this main office was not sold. You contend that the retail sale of tangible personal property in connection with the sales of the branches to each corporation should not be subject to the tax.

We are unable to agree with your contention. As we see it, the nearest possible basis for an exemption would be Section 6006.5(b) of the California Sales and Use Tax Law which defines an exempt occasional sale, in part, as any transfer of all or substantially all the property held or used by a person in the course of an activity for which a seller's permit is required when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purposes of Section 6006.5(b) stockholders are regarded as having the real or ultimate ownership of the property of a corporation.

It is our opinion, however, that there was not a transfer of "all or substantially all" the tangible personal property held or used in an activity for which a seller's permit is required when after the transfer assets substantial in relation to the total owned before the transfer were retained and continued in use in an activity for which a seller's permit is required, i.e. operation of the Santa Ana store.

Accordingly, we propose to recommend to the Board that the tax be redetermined without adjustment. If we have misunderstood the facts, please furnish us with the complete details relating to the transaction and we will make a further review of your petition. We will hold the petition in abeyance for thirty days.

Yours very truly,

W. W. Mangels Assistant Counsel

WWM:ja

cc: --- --- - Auditing